

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TURKIYE IHRACAT KREDI BANKASI,
A.S.,

Plaintiff,

v.

NATURE'S BAKERY, LLC,

Defendant.

Case No. 3:20-cv-00330-MMD-EJY

ORDER

AND ALL RELATED CASES

I. SUMMARY

This is a commercial dispute about the fig paste that goes into Defendant, Third-Party Plaintiff, and Counter Defendant Nature's Bakery, LLC's fig bars.¹ Nature's Bakery entered into a multi-year deal with Elmas Dis Ticaret A.S. ("Elmas"), a Turkish fig producer, to purchase fig paste, but Elmas became insolvent either before it could send Nature's Bakery all of the fig paste promised under the deal, as Nature's Bakery alleges, or before Nature's Bakery could pay for all of it, as Plaintiff and Cross Defendant Turkiye Ihracat Kredi Bankasi, A.S. ("Turk Eximbank") alleges. Elmas is not a party to this case. Elmas and Nature's Bakery were using Defendant, Counter Claimant, Cross Claimant, and Third-Party Defendant Intransia, LLC to ship the fig paste between Turkey and the United States—and handle customs—at the time Elmas and Nature's Bakery's deal fell apart. Turk Eximbank—an export credit bank owned by the Turkish government—was assigned the rights to certain of Elmas' allegedly unpaid invoices to Nature's Bakery

¹See, e.g., Nature's Bakery, *Whole Wheat Fig Bars* (Last Visited February 2, 2022), <https://www.naturesbakery.com/shop-snacks/whole-wheat-fig-bars>.

1 following Elmas' insolvency and filed this action seeking to recover on them. (ECF No.
 2 1.) Turk Eximbank and Nature's Bakery have settled the claims between them (ECF No.
 3 121), but disputes remain about who owes what to whom between Nature's Bakery and
 4 Intransia, and Intransia and Turk Eximbank, who have filed various claims against each
 5 other.

6 Before the Court are: (1) Nature's Bakery's motion for summary judgment on its
 7 breach of contract claim against Intransia (ECF No. 65);² (2) Turk Eximbank's motion for
 8 summary judgment on Intransia's sole remaining unjust enrichment claim against it (ECF
 9 No. 71 at 8-14);³ and (3) Intransia's motion for summary judgment on its claims against
 10 Nature's Bakery (ECF No. 72).⁴ As further explained below, the Court will grant Nature's
 11 Bakery's motion against Intransia because the pertinent indemnification agreement is
 12 unambiguous, valid, and enforceable, deny Intransia's motion against Nature's Bakery,
 13 mostly without prejudice because it does not comply with the Local Rules, and deny Turk
 14 Eximbank's motion as to Intransia's unjust enrichment claim because Intransia has
 15 presented a valid unjust enrichment claim that is not time barred, but a dispute of
 16 material fact remains regarding the extent to which Turk Eximbank was unjustly
 17 enriched, if at all.⁵

18 **II. BACKGROUND⁶**

19 This case arises out of Elmas' insolvency and corresponding inability to pay—if
 20 Elmas was solvent and continued to pay per the parties' preexisting arrangement, there

21 ²Intransia filed a response (ECF No. 67) and Nature's Bakery filed a reply (ECF
 22 No. 69).

23 ³Intransia filed a response (ECF No. 79) and Turk Eximbank filed a reply (ECF
 24 No. 91 at 34-39).

25 ⁴Nature's Bakery filed a response (ECF No. 78) and Intransia filed a reply (ECF
 26 No. 90).

27 ⁵Various parties requested oral argument on the pending motions but those
 28 requests are denied as unnecessary. See LR 78-1 ("All motions may be considered and
 decided with or without a hearing.").

⁶The facts recited in this section are undisputed unless otherwise noted.

1 would likely be no dispute between the parties to this case. Instead, Turk Eximbank is
2 trying to recover money owed to Elmas from Nature's Bakery, Nature's Bakery is trying
3 to get Intransia to cover approximately \$130,000 of what it owes to Turk Eximbank by
4 enforcing an indemnification agreement, and Intransia is trying to get both Turk
5 Eximbank and Nature's Bakery to pay money that Elmas was supposed to pay Intransia
6 for getting fig paste to Nature's Bakery in the United States.

7 The intricacies of who owes what to whom are informed by the course of dealing
8 between the parties until Elmas went bankrupt. Elmas and Nature's Bakery had a deal
9 where Nature's Bakery agreed to buy some 5.5 million pounds of dried fig paste spread
10 across several deliveries. (ECF Nos. 65-1 at 3, 65-2.) Elmas would invoice Nature's
11 Bakery for each delivery, and Nature's Bakery would pay Elmas. (ECF Nos. 71-1 at 4-5,
12 72 at 2.) There was a separate line item on each invoice for shipping and insurance
13 charges, which Intransia, who handled the shipping and customs for each shipment,
14 would pay upfront to get the fig paste into the United States. (ECF Nos. 47-1 at 2, 71 at
15 4.) But Nature's Bakery would not pay Intransia directly for these charges. Instead,
16 Nature's Bakery would pay Elmas, and then Elmas would pay Intransia for the fees,
17 taxes, duties, and whatever profit Intransia was owed for each invoice—under separate
18 invoices that Intransia issued to Elmas. (ECF No. 72 at 2, 71-1 at 4-5, 72-1 at 167-208.)

19 Meanwhile, Turk Eximbank, the official credit exporting agency of the Republic of
20 Turkey and a state-owned bank, was financing Elmas' operations. (ECF No. 71-1 at 2.)
21 Elmas specifically participated in Turk Eximbank's Short Term Export Credit Discount
22 Program, under which Turk Eximbank dispersed loan proceeds to Elmas totaling 85% of
23 each shipment balance each time Elmas sent a shipment of dried fig paste to Nature's
24 Bakery. (*Id.* at 2.) This program also gave Turk Eximbank "rights and title to the
25 corresponding invoice rights from Elmas[.]" (*Id.*) And according to Turk Eximbank, it also
26 meant that Nature's Bakery was supposed to pay Turk Eximbank directly, not Elmas,
27 because Elmas had assigned the invoices to Turk Eximbank. (*Id.* at 2-3.) Turk Eximbank
28 filed this lawsuit against Nature's Bakery because Nature's Bakery allegedly owes Turk

1 Eximbank approximately \$400,000 for fig paste produced by Elmas, transported by
2 Intransia, and received by Nature's Bakery to use in its fig bars. (*Id.* at 3-4.)

3 After Turk Eximbank sued Nature's Bakery, Nature's Bakery filed a third-party
4 complaint against Intransia for breach of an indemnification agreement the parties
5 executed on November 18, 2016. (ECF No. 19; see *a/so* ECF No. 19-1 ("Indemnification
6 Agreement").) According to Nature's Bakery,⁷ Elmas resurfaced in August 2016 after
7 going silent for a few months demanding payment of several outstanding invoices
8 totaling \$130,046.20. (ECF No. 19 at 2.) "Because Elmas owed money to [Intransia],
9 who had acted as a broker for Elmas in the past, Elmas instructed Nature's Bakery to
10 pay this sum directly to them." (*Id.*) Nature's Bakery paid Intransia that amount, and in
11 exchange, Nature's Bakery alleges, Intransia agreed to indemnify Nature's Bakery in the
12 same amount if any other party subsequently sought payment on the same invoices. (*Id.*
13 at 2-4.) Nature's Bakery asked Intransia to pay Turk Eximbank the \$130,046.20 it had
14 paid Intransia pursuant to the Indemnification Agreement both when Turk Eximbank
15 initially demanded payment from Nature's Bakery and when Turk Eximbank filed this
16 lawsuit, but Intransia refused. (*Id.* at 4.)

17 Because the Indemnification Agreement is central to Nature's Bakery and
18 Intransia's pending motions, the Court describes it in detail here. The recitals section of
19 the Indemnification Agreement provides as follows:

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23 ⁷Intransia alleges that Nature's Bakery presented Intransia with the
24 Indemnification Agreement as a shipment of fig paste was coming into the United States,
25 which Nature's Bakery requested be diverted to Missouri instead of Nevada. (ECF No.
26 36 at 13-16.) After Intransia diverted the fig paste to Missouri, Nature's Bakery tested the
27 fig paste and rejected it, forcing Intransia to come pick the fig paste up and pay to
28 dispose of it. (*Id.*) Intransia further alleges the Indemnification Agreement is invalid
because Nature's Bakery was already obligated to pay for the invoice specified in the
agreement, and Intransia signed it under duress because it had no other feasible
commercial option other than to sign it if it wanted Nature's Bakery to pay it for the fig
paste Intransia imported—specifically the one shipment in transit. (*Id.*)

RECITALS

A. Nature's Bakery has previously purchased certain goods from ("Goods") from Elmas Dis Ticaret A.S., a Turkish company fig grower ("Elmas").

B. After the Nature's Bakery received the Goods, but before it could wire payment, Elmas went out of business and its bank accounts were frozen.

C. Intransia does business as, among other things, a customs broker and has previously performed services for Elmas for which it is still owed monies.

D. Intransia has informed Nature's Bakery that Elmas has informed it that Intransia may receive from Nature's Bakery monies which Nature's Bakery owes Elmas, and apply such funds to the debt which Elmas owes Intransia.

E. Nature's Bakery and Intransia have agreed that Intransia may invoice Nature's Bakery for the Goods in the amount of \$130,046.42. Intransia has issued its Invoice Number 1611034 to Nature's Bakery for the Goods ("Invoice"). The amount of the invoice reflects amounts which Nature's Bakery owes Elmas and which Elmas owes Intransia.

F. Nature's Bakery has agreed to pay the Invoice. In exchange, Intransia will indemnify Nature's Bakery, its successors, assigns and transferees against any claim by or for Elmas. Intransia has represented to Nature's Bakery that Elmas consents to the substance and terms of this Agreement.

(ECF No. 19-1 at 2.) The Indemnification Agreement next provides that the recitals are correct and incorporated into the rest of the agreement by reference. (*Id.*) The Indemnification Agreement goes on to state the terms of the parties' agreement, specifically that: (1) Intransia issued an invoice attached to the Indemnification Agreement to Nature's Bakery (though there is a typo in Nature's Bakery); (2) that Nature's Bakery will pay the invoice for the Goods (though the heading states "Payment to Pacific Ingredient"); and (3) Intransia will indemnify Nature's Bakery "from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, brought by or for Elmas, its successors, assigns, transferees, and agents, arising out of or related to the purchase of the Goods" (defined as the "Claims") up to \$130,046.42 in the event any Claims are brought against Nature's Bakery. (*Id.* at 2-3.)

The Indemnification Agreement then includes several miscellaneous provisions. (*Id.* at 3-4.) In pertinent part, these provisions include one stating that authorized representatives of both parties read and understood the agreement and agree to be legally bound by it. (*Id.* at 3.) Another provision states that the Indemnification

1 Agreement is the entire agreement between the parties “with respect to the agreement
2 hereof.” (*Id.*) Yet another provision states that the headings do not affect the construction
3 or interpretation of the agreement. (*Id.*) Other provisions state the agreement is
4 governed by Nevada law and that venue is proper in state or federal courts located in
5 Nevada. (*Id.* at 4.) Nature’s Bakery’s pending motion seeks summary judgment on its
6 claim that Intransia breached the Indemnification Agreement, along with a declaration
7 that the agreement is valid and enforceable. (ECF No. 65.)

8 When Intransia answered Nature’s Bakery’s Third-Party Complaint, it also filed a
9 counterclaim against Nature’s Bakery alleging Nature’s Bakery breached a contract
10 consisting of the Power of Attorney giving Intransia Nature’s Bakery’s permission to act
11 on its behalf for import purposes and certain terms attached to the Bills of Lading
12 delivered with each shipment of fig paste that Intransia delivered to Nature’s Bakery in
13 the United States. (ECF No. 36 at 8-13.) Together, Intransia alleges, these documents
14 give Intransia the right to seek repayment from Nature’s Bakery of all of the money
15 Elmas owes Intransia for the shipments of fig paste that Intransia imported from Elmas in
16 Turkey to Nature’s Bakery in the United States. (*Id.*) Intransia further alleges that
17 Nature’s Bakery owes Intransia for a shipment of fig paste that Nature’s Bakery
18 ultimately refused delivery of in September 2016. (*Id.* at 13-15.) Intransia further seeks a
19 declaration that the Indemnification Agreement is unenforceable (*id.* at 15-16, 18-19)
20 and asserts in the alternative an unjust enrichment claim against Nature’s Bakery in the
21 event it does not prevail on its breach of contract claim (*id.* at 17-18). In its pending
22 motion, Intransia seeks summary judgment on all three of these claims—breach of
23 contract, unjust enrichment, and declaratory relief—against Nature’s Bakery. (ECF No.
24 72.)

25 Moreover, Intransia asserted several crossclaims against Turk Eximbank. (ECF
26 No. 36 at 19-29.) Turk Eximbank moved to dismiss these crossclaims. (ECF No. 45.)
27 United States Magistrate Judge Elayna J. Youchah recommended that United States
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District Judge Larry R. Hicks⁸ grant the motion as to all the contractual claims Intransia asserted against Turk Eximbank and dismiss the Doe Defendants named in Intransia's crossclaims against Turk Eximbank but deny the motion as to Intransia's unjust enrichment claim against Turk Eximbank. (ECF No. 53.)

Turk Eximbank objected only to Judge Youchah's recommendation to let Intransia's unjust enrichment claim proceed (ECF No. 54), but Judge Hicks overruled Turk Eximbank's objection (ECF No. 68). Judge Hicks first specifically noted in overruling Turk Eximbank's objection "long-standing Nevada case law which has found that unjust enrichment claims may exist against third party defendants despite a plaintiff's pre-existing contract with the primary defendant." (*Id.* at 3 (citing *W. Charleston Lofts I, LLC v. R & O Const. Co.*, 915 F. Supp. 2d 1191, 1195 (D. Nev. 2013)) (citation omitted).) Judge Hicks next rejected Turk Eximbank's argument that it lacked a sufficiently direct relationship with Intransia to support an unjust enrichment claim because "each had a part in the successful completion of the shipment and Turk Eximbank received a benefit from Intransia's services, i.e., the delivered shipment." (*Id.* at 4.) Judge Hicks finally rejected Turk Eximbank's argument that Intransia lacked standing to assert an unjust enrichment claim against it because Turk Eximbank only had a relationship with Intransia Turkey because "Intransia does in fact appear to be related to, if not the same company as, 'Intransia Turkey.'" (*Id.* at 4.)

In the live portion of its motion, and as noted, Turk Eximbank now seeks summary judgment on Intransia's unjust enrichment claim against it. (ECF No. 71 at 8-14.)

III. LEGAL STANDARD

"The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits

⁸Judge Hicks presided over this case until he recused (ECF No. 101), at which point this case was randomly reassigned to this Court (ECF No. 102).

1 “show there is no genuine issue as to any material fact and that the movant is entitled to
2 judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An
3 issue is “genuine” if there is a sufficient evidentiary basis on which a reasonable
4 factfinder could find for the nonmoving party and a dispute is “material” if it could affect
5 the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477
6 U.S. 242, 248-49 (1986). Where reasonable minds could differ on the material facts at
7 issue, however, summary judgment is not appropriate. See *id.* at 250-51. “The amount of
8 evidence necessary to raise a genuine issue of material fact is enough ‘to require a jury
9 or judge to resolve the parties’ differing versions of the truth at trial.” *Aydin Corp. v. Loral*
10 *Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities Service Co.*,
11 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views
12 all facts and draws all inferences in the light most favorable to the nonmoving party. See
13 *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986)
14 (citation omitted).

15 The moving party bears the burden of showing that there are no genuine issues
16 of material fact. See *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982).
17 Once the moving party satisfies Rule 56’s requirements, the burden shifts to the party
18 resisting the motion to “set forth specific facts showing that there is a genuine issue for
19 trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may not rely on denials in the
20 pleadings but must produce specific evidence, through affidavits or admissible discovery
21 material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,
22 1409 (9th Cir. 1991), and “must do more than simply show that there is some
23 metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th
24 Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
25 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s position
26 will be insufficient[.]” *Anderson*, 477 U.S. at 252.

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IV. DISCUSSION

The Court first addresses Nature's Bakery's motion against Intransia, then Intransia's motion against Nature's Bakery, and then Turk Eximbank's motion regarding Intransia's unjust enrichment claim against it.

A. Nature's Bakery's Motion Against Intransia

Nature's Bakery argues it is entitled to summary judgment on its sole claim against Intransia for breach of the Indemnification Agreement because the Indemnification Agreement is valid and unambiguous, and Intransia breached it when it refused to indemnify Nature's Bakery upon Nature's Bakery's demands either when Turk Eximbank first sought payment from Nature's Bakery, or when Turk Eximbank filed this case. (ECF No. 65.) Intransia argues the Indemnification Agreement is invalid or summary judgment on it is at least premature because it has raised a number of affirmative defenses to the enforceability of the agreement and Intransia does not yet have any obligation to indemnify Nature's Bakery because Nature's Bakery has not yet been found legally liable for damages to Turk Eximbank. (ECF No. 67 at 7-8.) The Court agrees with Nature's Bakery.

To start, the Court finds Intransia's argument that the Indemnification Agreement is ambiguous or vague unpersuasive. (*Id.* at 8-11.) While the Indemnification Agreement contains some errors, it is really quite clear. The Indemnification Agreement states that Nature's Bakery will pay Intransia \$130,046.42 that Nature's Bakery owed Elmas to cover a debt that Elmas owed Intransia in exchange for Intransia's promise to indemnify Nature's Bakery against any claim "by or for Elmas." (ECF No. 19-1 at 2.) As Nature's Bakery argues in its pending motion, this case is a manifestation of the precise scenario apparently contemplated by the Indemnification Agreement. By filing this case, Turk Eximbank has brought a claim "for Elmas" because Turk Eximbank has acquired the right to collect on Elmas' invoices to Nature's Bakery. (ECF No. 71-1 at 2-3.)

Moreover, there is no dispute as to three material facts that inform the Court's interpretation of the Indemnification Agreement: (1) Nature's Bakery purchased fig paste

1 from Elmas; (2) Nature's Bakery always paid Elmas up until the Indemnification
2 Agreement, not Intransia; and (3) Elmas paid Intransia to get the fig paste from Turkey to
3 the United States. (ECF Nos. 65-1 at 3 (specifying that Nature's Bakery agreed to
4 purchase fig paste from Elmas), 65-2 (the agreement between Elmas and Nature's
5 Bakery), 67-2 at 2 (declining to dispute that Nature's Bakery agreed to purchase fig
6 paste from Elmas), 72 at 2 ("Typically, Elmas would invoice Nature's Bakery for the cost
7 of the fig paste and the cost of shipping and Elmas would pay the transportation and
8 duty fees to Intransia."), 78-1 at 5 ("Prior to that time, Nature's Bakery had never paid
9 Intransia directly; instead, Nature's Bakery paid Elmas and Elmas was solely responsible
10 for paying the shipment fees."), 72-1 at 167-208 (invoices from Intransia to Elmas for its
11 fees for specified shipments of fig paste).)

12 Against this background of undisputed facts, and considering the language of the
13 Indemnification Agreement, Intransia's argument regarding a purported ambiguity in the
14 term "Goods" used in the Indemnification Agreement rendering the entire agreement
15 unenforceable fails to persuade. (ECF No. 67 at 9-11.) Intransia specifically argues the
16 definition of Goods is fatally ambiguous by looking to the invoice attached to the
17 Indemnification Agreement, which specifies that the charges identified in the invoice are
18 for transportation and duty fees—not fig paste—and refers to the extrinsic evidence of
19 the memo line of the check Nature's Bakery paid to Intransia, which says 'to pay freight
20 company for transporta.' (*Id.* at 9-10.) But none of this renders the unambiguous
21 Indemnification Agreement any less clear. There is simply no dispute that Elmas paid
22 Intransia for transportation fees on each shipment of fig paste. Thus, it makes sense that
23 any money Elmas owed Intransia would be for transportation fees. And it is accordingly
24 reasonable that money Nature's Bakery paid to Intransia under the Indemnification
25 Agreement would be for transportation fees as well—part of the total cost that Nature's
26 Bakery would typically pay to Elmas for shipments of fig paste. (ECF No. 19-1 at 2
27 (specifying that Nature's Bakery is paying money it owes to Elmas that Elmas owes to
28 Intransia in exchange for indemnification).) Moreover, given the course of dealing

1 between the parties, the “Goods” that Nature’s Bakery previously purchased from Elmas
2 “a Turkish company fig grower” cannot reasonably mean anything but fig paste. (*Id.* at
3 2.) In sum, Intransia’s argument that “Goods” renders the Indemnification Agreement
4 fatally ambiguous or otherwise invalid does not follow.⁹

5 Intransia next argues that the Indemnification Agreement is invalid because it was
6 executed under duress. (ECF No. 67 at 11-13.) Intransia supports this argument with a
7 declaration from its principal, Nick Babus, where he explains the business pressures he
8 was facing in September 2016 and accordingly states he “involuntarily accepted the
9 terms of the Indemnification Agreement because the circumstances gave me no other
10 alternative[.]” (ECF No. 67-1 at 5.) But Mr. Babus’ concerns expressed in his April 2021
11 declaration are foreclosed by the unambiguous terms of the Indemnification Agreement
12 itself. First, the Indemnification Agreement contains an integration clause stating that the
13 Indemnification Agreement reflects the full agreement between Nature’s Bakery and
14 Intransia about the subject matter of the agreement, and states that the parties have
15 read, fully understood, and voluntarily accept the terms of the agreement. (ECF No. 19-1
16 at 3.) Second, another clause specifies that the Indemnification Agreement is signed as
17 an act of free will. (*Id.*) Third, yet another clause specifies that the Indemnification
18 Agreement cannot be modified except by a subsequent writing signed by both parties.
19 (*Id.*) The express terms of the Indemnification Agreement thus foreclose Intransia’s
20 current attempt to disavow it through the Babus declaration submitted along with
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24 ⁹Intransia also points out the error in the heading “Payment to Pacific Ingredient”
25 as suggesting that the ambiguity created by the term Goods was caused by Nature’s
26 Bakery failing to properly adapt an old form of agreement. (ECF No. 67 at 10-11.) The
27 Court agrees there is an error in the heading, and Intransia’s speculation as to how that
28 error occurred seems reasonable. But this argument is unpersuasive because it depends
on the Court accepting Intransia’s argument that the term Goods is ambiguous, which,
as explained above, the Court does not. Goods means fig paste. And in any event, a
separate provision of the Indemnification Agreement states that the headings do not
affect the construction or interpretation of the agreement. (ECF No. 19-1 at 3.)

1 Intransia's response to Nature's Bakery's motion stating that he signed the
2 Indemnification Agreement under commercial duress.¹⁰

3 Intransia next argues there was a failure of consideration in connection with the
4 Indemnification Agreement rendering the agreement invalid because Nature's Bakery
5 was already obligated to pay Intransia for importing the fig paste, so Nature's Bakery
6 cannot have agreed to anything new when it entered into the Indemnification Agreement.
7 (ECF No. 67 at 13-14.) However, that argument depends on the Court ruling in
8 Intransia's favor on Intransia's breach of contract claim—which the Court has not done
9 yet. Moreover, this argument is largely undercut by Intransia's concession that,
10 "[t]ypically, Elmas would invoice Nature's Bakery for the cost of the fig paste and the cost
11 of shipping and Elmas would pay the transportation and duty fees to Intransia." (ECF No.
12 72 at 2.) This concession is one element of the Court's finding, stated above, that there
13 is no dispute that Nature's Bakery had never paid Intransia until it entered into the
14 Indemnification Agreement. Thus, while its possible that Nature's Bakery may eventually
15 have to pay some amount to Intransia, that would not have been a foregone conclusion
16 at the time the parties executed the Indemnification Agreement.

17 With all this in mind, the express terms of the Indemnification Agreement also
18 foreclose Intransia's lack of consideration argument. By entering into the Indemnification
19 Agreement, Intransia got something new it did not look like it was going to get at the
20 time—money.¹¹ Again, the recitals section of the Indemnification Agreement states that

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22 ¹⁰Further, and as Nature's Bakery points out in reply (ECF No. 69 at 6-7), the fact
23 that the Indemnification Agreement is dated November 18, 2016—and that November is
24 typewritten into the agreement—tends to suggest that Mr. Babus' explanation of events
that occurred in September 2016 are not that relevant to his decision to sign the
agreement in November 2016 (ECF No. 19-1 at 1).

25 ¹¹The Court also rejects Intransia's unconscionability argument for the same
26 reason. (ECF No. 67 at 14-15.) Contrary to Intransia's argument that the Indemnification
27 Agreement was one-sided, Intransia got money it might not have otherwise gotten for
28 entering into the agreement. Intransia further argues, "Nature's Bakery paid Intransia a
portion of the transportation and duty fees it was owed, but Intransia purportedly agreed
to indemnify Nature's Bakery against any claims, losses, or damages arising from or
related to fig paste it purchased from Elmas at any time, even if completely unrelated to

1 “Intransia may receive from Nature’s Bakery monies which Nature’s Bakery owes Elmas,
2 and apply such funds to the debt which Elmas owes Intransia.” (ECF No. 19-1 at 2.) Said
3 otherwise, Intransia got money that Elmas owed it from Nature’s Bakery. Given Elmas’
4 insolvency, it is unclear Intransia would have otherwise gotten that money. This money
5 from Nature’s Bakery is sufficient consideration for Intransia’s end of the deal, to
6 indemnify Nature’s Bakery in the event Elmas or “its successors, assigns, transferees,
7 and agents” came to Nature’s Bakery looking for that money. (*Id.* at 2-3.) Again, this
8 situation has now arisen. But for now, the point is that Intransia received consideration
9 for its promise to indemnify Nature’s Bakery.

10 Intransia finally argues it has not yet breached the Indemnification Agreement
11 because Nature’s Bakery has not yet become legally liable to Turk Eximbank for
12 damages. (ECF No. 67 at 16.) But Intransia’s argument is again foreclosed by the
13 unambiguous text of the Indemnification Agreement itself. The Indemnification
14 Agreement states that Intransia must indemnify Nature’s Bakery “from and against all
15 claims, damages, losses, and expenses, including but not limited to attorneys’ fees,
16 brought by or for Elmas, its successors, assigns, transferees, and agents arising out of
17 or related to the purchase of the Goods[.]” (ECF No. 19-1 at 3.) It is not limited merely to
18 damages. And the Court finds that Turk Eximbank’s filing of this case constitutes a
19 “claim” filed by Elmas’ assignee. Intransia’s indemnification obligation under the
20 Indemnification Agreement kicked in, at the latest, when Turk Eximbank filed this case
21 against Nature’s Bakery.

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24 Intransia’s transportation of said goods.” (*Id.* at 15 (emphasis in original).) But that is an
25 incorrect interpretation of the Indemnification Agreement. The Indemnification
26 Agreement caps Intransia’s indemnification obligation at the \$130,046.42 it received.
27 (ECF No. 19-1 at 3.) And Intransia itself argues that it was only being paid for
28 transportation services it provided in connection with the importation of certain specified
shipments of fig paste in the Indemnification Agreement. (ECF No. 67 at 9-11.) Thus,
Intransia’s indemnification obligation cannot be “completely unrelated to Intransia’s
transportation of said goods” as it argues. (ECF No. 67 at 15.)

Moreover, Intransia relies on *Sanchez v. Alonso*, 615 P.2d 934 (Nev. 1980) to support its argument, but *Sanchez* does not support Intransia's argument. (ECF No. 67 at 16.) Contrary to Intransia's argument, but like the Indemnification Agreement at issue here, the Nevada Supreme Court found in *Sanchez* that "the right of action accrued in favor of the appellant-indemnitee upon a demand from the creditors, whether or not appellant had sustained actual damage at the time." 615 P.2d at 937. Also like in *Sanchez*, Nature's Bakery's pending motion against Intransia, "premised on the indemnity agreement, was appropriately brought prior to the time any judgment was rendered against" Nature's Bakery. *Id.*

In sum, the Court grants Nature's Bakery's summary judgment motion against Intransia. The Court further declares that the Indemnification Agreement is valid and enforceable. Nature's Bakery is entitled to summary judgment that Intransia breached the Indemnification Agreement. Intransia must pay \$130,046.42 of the amount that Nature's Bakery ultimately pays or has paid Turk Eximbank to resolve Turk Eximbank's claim against Nature's Bakery.¹²

B. Intransia's Motion Against Nature's Bakery

Because the Court grants Nature's Bakery summary judgment that Intransia breached the valid and enforceable Indemnification Agreement, the Court denies—as it must—the portion of Intransia's pending motion regarding its declaratory relief claim against Nature's Bakery. (ECF No. 72 at 16-20.) For the same reason, the Court grants Nature's Bakery summary judgment on Intransia's declaratory relief claim. (ECF No. 36 at 18-19.) Again, the Indemnification Agreement is valid, enforceable, and Intransia breached it.

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¹²Intransia may accordingly renew its argument that "the \$130,046.42 payment made by Nature's Bakery must still be offset against the balance Nature's Bakery continues to owe Intransia" (ECF No. 67 at 15) if the Court later finds Nature's Bakery owes Intransia any money. But for now, this argument is premature.

1 That leaves Intransia’s arguments that it is entitled to summary judgment on both
 2 its breach of contract and unjust enrichment claims. (ECF No. 72 at 2-16.) The Court
 3 initially notes that Intransia’s attempt to simultaneously move for summary judgment on
 4 alternative claims is at best illogical and at worst impossible because one may prevail on
 5 a breach of contract claim, or an unjust enrichment claim, but not both.¹³ See, e.g., *W.*
 6 *Charleston Lofts I, LLC*, 915 F. Supp. 2d at 1196 (“An unjust enrichment claim cannot lie
 7 where an express written contract exists ‘because no agreement can be implied when
 8 there is an express agreement.’”) (citation omitted).

9 But more importantly when it comes to resolving the pending motions, Intransia’s
 10 motion for summary judgment violates the Local Rules. Under LR 56-1, “[m]otions for
 11 summary judgment and responses thereto must include a concise statement setting forth
 12 each fact material to the disposition of the motion that the party claims is or is not
 13 genuinely in issue . . .” [and] “[t]he statement of facts will be counted toward the
 14 applicable page limit in LR 7-3.” Under LR 7-3, motions for summary judgment are
 15 limited to 30 pages excluding exhibits. See LR 7-3(a).

16 Intransia decided to submit a separate statement of facts with its motion for
 17 summary judgment. (ECF No. 72-2.) This decision arguably violates LR 56-1, which
 18 provides that the motion must “include” a concise statement of material facts.
 19 Regardless, Intransia’s motion for summary judgment is 20 pages long. (ECF No. 72
 20 (excluding the pages titled ‘Exhibit Index’ and ‘Certificate of Service’).) Intransia’s
 21 separate statement of material facts is 14 pages long. (ECF No. 72-2 (again excluding
 22 the pages titled ‘Exhibit Index’ and ‘Certificate of Service’).) Adding the two documents
 23 together per LR 56-1, Intransia’s motion for summary judgment is 34 pages long—or four
 24 pages too long. See LR 7-3(a). The Court may sanction Intransia for violating its Local
 25

26 ¹³Though there is of course nothing wrong with pleading these two claims in the
 27 alternative. See, e.g., *Braden v. State Farm Mut. Auto Ins. Co.*, Case No. 2:18-cv-01741-
 28 APG-NJK, 2019 WL 2176919, at *2 (D. Nev. May 20, 2019) (noting that “simultaneous
 claims for breach of contract and unjust enrichment” may be pleaded in the alternative).

Rules and Civil Standing Order—see LR IA 11-8(c); see also United States District Judge Miranda M. Du’s Civil Standing Order No. 1 (Last Visited Feb. 2, 2022), <https://www.nvd.uscourts.gov/wp-content/uploads/2018/06/Civil-Standing-Order-MMD.pdf> (“The parties are expected to familiarize themselves with the Court’s Local Rules of Practice. Filings that fail to comply with the Local Rules or this Standing Order may be stricken.”)—and will do so here by denying the portions of Intransia’s motion for summary judgment regarding its breach of contract and unjust enrichment claims without prejudice to refiling in compliance with the Local Rules, at an appropriate time, and considering the Court’s rulings above that the Indemnification Agreement is valid, enforceable, and that Intransia breached it.¹⁴ Intransia’s motion for summary judgment is accordingly denied as specified above.

¹⁴While the Court may waive Intransia’s violation of the Local Rules here under LR IA 1-4 if the interests of justice so require, they do not, so the Court will not. First, compliance with the Local Rules is important. Second, the Court’s denial of portions of Intransia’s motion without prejudice allows the Court to compel Intransia’s counsel to comply with the Local Rules without unduly prejudicing Intransia, their client. The Court’s decision to deny portions of Intransia’s motion without prejudice also satisfies the notice requirement of LR IA 11-8—this is the notice, and Intransia may still raise the same arguments again. Third, the Court finds it judicially efficient to require Intransia to update its summary judgment arguments in light of the Court’s findings on the Indemnification Agreement included in this order, as those findings will likely affect the arguments Intransia would make in any renewed motion. Fourth, Intransia’s reply in support of its motion for summary judgment prominently features arguments that it is entitled to summary judgment on procedural grounds. (ECF No. 90 at 2 (citing Fed. R. Civ. P. 56(c)), 8 (citing Fed. R. Civ. P. 56(e)), 10 (citing in part LR 56-1).) These arguments strike the Court as unfair when Intransia itself failed to comply with procedural rules in filing its motion for summary judgment. It is particularly notable that Intransia cited LR 56-1 as one reason why Intransia is entitled to summary judgment without acknowledging that Intransia itself violated LR 56-1 by filing its motion the way that it did. Thus, the interests of justice do not favor waiving the Local Rules that Intransia has violated here.

In the event Intransia files a renewed motion for summary judgment in this case in the future, the Court notes its preference in line with the Local Rules that each exhibit be uploaded as a separate document to CM/ECF, and that references to exhibits within briefing include pincites (specific page references), such as ECF No. 72-2 at 3. See LR IC 2-2(a)(3)(A) (“They must be attached as separate files...”); LR IA 10-3 (providing requirements for exhibits). Intransia’s counsel filed its exhibits as one combined document (see, e.g., ECF No. 72-1) and did not provide page references within its briefing to particular pages within particular exhibits (ECF No. 72), which made it difficult for the Court to locate cited exhibits and violates LR IA 10-3(c). The Court expects

C. Turk Eximbank's Motion Regarding Intransia's Unjust Enrichment Claim

Turk Eximbank argues it is entitled to summary judgment on Intransia's unjust enrichment claim against it because it is barred by the applicable statute of limitations, the claim fails as a matter of law because Intransia cannot satisfy two of its elements, Intransia (as opposed to Intransia Turkey) lacks standing to assert an unjust enrichment claim against Turk Eximbank, Intransia and Turk Eximbank lack a sufficiently direct relationship, and Intransia maintains adequate remedies at law. (ECF No. 71 at 8-14.) Intransia counters that it has satisfied every element of its unjust enrichment claim and genuine disputes of material fact remain as to the extent to which Turk Eximbank was unjustly enriched, Intransia's claim is timely, Intransia has standing and a sufficient relationship with Turk Eximbank to bring its unjust enrichment claim, and its unjust enrichment claim is not precluded by any other remedies at law. (ECF No. 79.) The Court agrees with Intransia in pertinent part.

To start, the Court notes that Judge Hicks already addressed and rejected three of Turk Eximbank's arguments at the motion to dismiss stage that Turk Eximbank now reiterates without adding any new evidence to support them as the Court would expect at the summary judgment stage. (ECF No. 71 at 11-14 (failing to specifically cite any evidence).) Judge Hicks specifically addressed and rejected Turk Eximbank's arguments that Intransia's unjust enrichment claim fails as a matter of law because contracts existed between other parties to these fig paste transactions, that Intransia lacks a sufficiently direct relationship with Turk Eximbank, and that Intransia lacks standing. (ECF No. 68 at 3-4.) The Court sees no reason to depart from Judge Hicks' rulings on these arguments because Turk Eximbank simply reiterates them without presenting any

Intransia to comply with the Local Rules, especially going forward following the Court's explicit guidance in this order. Moreover, if Intransia files a renewed motion for summary judgment in line with this order, Intransia must also file a motion seeking leave to amend the scheduling order in the case because the dispositive motions deadline has expired. (ECF No. 64 (providing deadline of June 15, 2021).)

1 evidence obtained through discovery. As to standing, Intransia responded to Turk
2 Eximbank's motion in pertinent part with a declaration from Mr. Babus stating that
3 Intransia Turkey assigned Intransia the right to collect any transportation costs incurred
4 by Intransia Turkey. (ECF Nos. 79 at 11 (making the argument), 79-1 at 11 ("I am the
5 sole owner of Intransia Uluslararası Lojistik Nakliye Tic. Ltd. Sti. ("Intransia Turkey"), and
6 I have assigned the right to collect any funds owed to Intransia Turkey to Intransia
7 LLC.")) In reply, Turk Eximbank urges the Court to reject the pertinent Babus declaration
8 as a sham but does not present any contrary evidence that would establish a dispute of
9 material fact as to whether Intransia Turkey assigned its collection rights to Intransia, as
10 Babus states. (ECF No. 91 at 36 n.25.) Absent any contrary evidence, it appears that
11 Intransia maintains standing against Turk Eximbank at this stage of this litigation.

12 The Court now moves to Turk Eximbank's merits argument before addressing its
13 statute of limitations argument. "Under Nevada law, unjust enrichment 'occurs whenever
14 a person has and retains a benefit which in equity and good conscience belongs to
15 another.'" *W. Charleston Lofts I, LLC*, 915 F. Supp. 2d at 1195 (citation omitted). Turk
16 Eximbank first argues that Intransia did not confer a benefit on Turk Eximbank. (ECF No.
17 71 at 9.) But Judge Hicks also addressed and rejected this argument when Turk
18 Eximbank raised it at the motion to dismiss stage, noting, "Turk Eximbank received a
19 benefit from Intransia's services, i.e., the delivered shipment." (ECF No. 68 at 4.) There
20 is no dispute here that Turk Eximbank would not have a right to demand payment from
21 Nature's Bakery if the shipments of fig paste were not delivered to Nature's Bakery, nor
22 is there a dispute about who facilitated the delivery of the shipments of fig paste to
23 Nature's Bakery—it was Intransia. And again, Turk Eximbank fails to proffer any
24 additional evidence not before Judge Hicks to make its argument stronger this time
25 around. Thus, the Court finds that Intransia conferred a benefit on Turk Eximbank by
26 facilitating the delivery of the shipments of fig paste.

27 Turk Eximbank next argues that is not unjust to allow it to retain any benefit it has
28 obtained by purchasing invoices from Elmas. This is where the Court finds a dispute of

1 material fact remains precluding summary judgment in Turk Eximbank's favor.¹⁵ More
 2 specifically, the Court cannot say from the evidence proffered by the parties whether
 3 Turk Eximbank has successfully collected from Nature's Bakery only amounts
 4 corresponding to amounts Nature's Bakery owed Elmas for the fig paste itself. Or has
 5 Turk Eximbank recovered money from Nature's Bakery corresponding to the shipping
 6 fees Elmas would have paid to Intransia? And if it has, to what extent, meaning, how
 7 much does Turk Eximbank owe Intransia? These are material questions of fact that the
 8 Court cannot resolve on the current record. But if Turk Eximbank possesses money that
 9 Elmas normally would have paid to Intransia, it would not be just to let Turk Eximbank
 10 keep that money. This is particularly so because "Turk Eximbank disbursed loan
 11 proceeds totaling 85% of each shipment balance and was assigned the shipment invoice
 12 rights from Elmas." (ECF No. 71 at 3.) That suggests Turk Eximbank did not acquire
 13 rights to the shipping charges owed to Intransia for each shipment. Accordingly, if Turk
 14 Eximbank has recovered shipping costs from Nature's Bakery on top of the 85% per
 15 shipment it owns, that money equitably belongs to Intransia.

16 As to the statute of limitations, the Court agrees with Intransia that its unjust
 17 enrichment claim against Turk Eximbank is not time barred. (ECF No. 79 at 7-9.) "The
 18 statute of limitation for an unjust enrichment claim is four years." *In re Amerco Derivative*
 19 *Litig.*, 252 P.3d 681, 703 (Nev. 2011) (citation omitted). The statute of limitations begins
 20 to run when "[w]hen the plaintiff knew or in the exercise of proper diligence should have
 21 known of the facts constituting *the elements of* his cause of action[.]" which is a question
 22 of fact. *Id.* (emphasis added, citation omitted). Turk Eximbank's argument that the
 23 applicable statute of limitations began running when Intransia conferred a benefit is
 24 accordingly incorrect. (ECF No. 71 at 8-9.) Intransia did not have a claim until it knew or

25
 26 ¹⁵As pertinent to this argument, both Turk Eximbank and Intransia discuss
 27 caselaw but not evidence that may have allowed the Court to resolve this issue now. The
 28 Court declines to address the caselaw both parties discuss because the parties do not
 discuss the facts and evidence pertinent to this case, so it is difficult for the Court to say
 whether the cited cases favor one party's position or the other.

1 should have known all the elements of its unjust enrichment claim were satisfied. See *In*
2 *re Amerco Derivative Litig.*, 252 P.3d at 703. Thus, the applicable statute of limitations
3 clock did not start running until Intransia knew or should have known Turk Eximbank
4 retained a benefit which in equity and good conscience belongs to Intransia. See *W.*
5 *Charleston Lofts I, LLC*, 915 F. Supp. 2d at 1195 (specifying there is more than one
6 element to an unjust enrichment claim). There is no dispute here that Intransia filed its
7 claim against Turk Eximbank within four years of Turk Eximbank retaining benefits
8 allegedly due to Intransia. (ECF Nos. 36 (filed Sept. 10, 2020), 71 at 4 (stating that Turk
9 Eximbank received partial payments from Nature's Bakery in 2017 and 2018).)

10 In sum, Turk Eximbank's motion for summary judgment on Intransia's unjust
11 enrichment claim is denied.

12 **V. CONCLUSION**

13 The Court notes that the parties made several arguments and cited to several
14 cases not discussed above. The Court has reviewed these arguments and cases and
15 determines that they do not warrant discussion as they do not affect the outcome of the
16 motions before the Court.

17 It is therefore ordered that Nature's Bakery's motion for summary judgment (ECF
18 No. 65) is granted as specified herein.

19 It is further ordered that Turk Eximbank's motion for summary judgment on
20 Intransia's unjust enrichment claim (ECF No. 71) is denied as specified herein.

21 It is further ordered that Intransia's motion for summary judgment (ECF No. 72) is
22 denied as specified herein.

23 DATED THIS 2nd Day of February 2022.



24
25
26 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE